

PCB Issue

Pennsylvania Beneficial Use Permit

The Toxics Substances Control Act (TSCA) polychlorinated biphenyl (PCB) program is not delegated to the states.

EPA promulgated PCB regulations.

The federal PCB regulations prohibit the use of PCB containing materials at concentrations of 2 ppm and greater.

PCB containing materials are those materials that contain 2 ppm or greater of PCBs.

PADEP has issued Beneficial Use Permits (BUPs) to five sites in PA. The BUP allows the use of regulated fill as construction material at these sites.

The BUP defines regulated fill as “soil, rock, stone dredged material, used asphalt, historic fill, and brick, block or concrete from construction and demolition activities that is separate from other waste and recognizable as such that has been affected by a spill or release of a regulated substance and the concentrations of regulated substances exceed the values in Table FP-1”.

Table FP-1 defines regulated fill with a total PCB concentration of up to 484 ppm to be acceptable for use as construction material. The regulated fill as defined in the BUP is a PCB containing material.

The BUPs violate the use provisions of the federal PCB regulations. *(The State’s permit is preempted by TSCA)*

Pennsylvania is the only state in the country that has issued a permit that allows the use of PCB containing materials at levels above 1 ppm. *(We need to level the playing field)*

The PCB containing materials covered in the PADEP BUPs would be regulated for disposal under the federal PCB regulations.* Under the PCB regulations these PCB containing materials would minimally be required to be sent to a RCRA Subtitle D landfill.

The sites which have been issued BUPs are not RCRA Subtitle D landfills. **Deliberative Process / Ex. 5**

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The BUP states at Condition 31 that the regulated fill material ceases to be waste once the material is placed in the receiving site. *(The state recognizes it as a waste but reclassifies it as a nonwaste once it is placed in the beneficial use permitted facility)*

The PADEP BUPs are issued to sites approved for construction and that are zoned and used for commercial and industrial uses. The BUP requires a deed notice but does not require a deed restriction which would prevent the use of the site to change in the future. *(Because there is no deed restriction on the site there is the potential for risk to health and the environment)*

On February 3, 2017, EPA Region 3 sent a letter to PADEP notifying them that the activities permitted under the BUP are prohibited under the federal PCB regulations.

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PADEP stated that they would inform EPA Region 3 of any BUP notifications that included PCB containing materials at 2 ppm or greater.

Since June 2017, EPA Region 3 has received 15? of these notifications from PADEP.

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